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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,837	11/14/2003	Vincent Bryan	31132.189	2562
46333 7590 09/24/2008 HAYNES AND BOONE, LLP 901 Main Street Suite 3100 Dallas, TX 75202				
EXAMINER				
STEWART, ALVIN J				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
09/24/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/713,837

**Applicant(s)**

BRYAN ET AL.

**Examiner**

Alvin J. Stewart

**Art Unit**

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 July 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-9, 13, 30, 31 and 33-37 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 4-9, 13, 30 and 31 is/are allowed.  
6) ☒ Claim(s) 33-37 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Allowable Subject Matter***

Claims 4-9, 13, 30, and 31 are allowed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33-37 are rejected under 35 U.S.C. 103(a) over Monson US Patent 4,863,477 in view of Bryan et al US Patent Pub. 2002/0035400 A1.

Monson discloses an intervertebral disc (2) comprising an exterior surfaces (4 & 6), a resilient body (30 & 42), an anchor (10, 13, 14) implanted in an anterior surface of a vertebral body, forming concave surfaces and inserting between the formed concave surfaces (see Figure 2, and col. 2, lines 55-58). However, Monson is silent on how the slightly concave walls of the patient's endplates are form. It is an inherent characteristic of the method of replacing artificial discs to use tools in order to remove the damage material in the disc. It is well known in the art to use knives, mill jigs, etc..to remove the damage tissue. Therefore, it well known in the art to use any type of tool in order to create a slightly concave shape in the walls of each endplate.

Bryan et al disclose a convex shaped implant connected between vertebral bodies and the vertebral bodies are precisely prepared having a concave surface for the purpose of inserting the convex surface of the vertebral implant (see paragraph 57).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the inherent step of making a concave shape of the Monson reference with the clear preparation step of making a concave shape opening of the Bryan et al reference in order to have a flush plate-to-plate connection of the implant with the vertebral bone and to provide a highly stable implanted joint.

NOTE: the two implants have an outer surface having a convex shape. Therefore, the Examiner interpreted the middle portion as the section of the intervertebral bones higher than the rest of the endplates because the end plates are made of a concave shape in order to fit the same of the implant. See the implants having a circumferential rim shallower than the middle portion.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J. Stewart whose telephone number is 571-272-4760. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alvin J Stewart/  
Primary Examiner, Art Unit 3774

September 22, 2008.